IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1275 OF 2007
IN
EXECUTION APPLICATION NO.127 OF 2006
IN
SUMMARY SUIT NO. 4082 OF 2007

Ramnik Pasu Gala. ... Plaintiff.
V/s.
Patel Corporation and Ors. ... Defendants.
And
Dattatray Jyoti Wagh. ... Applicant.

Ms. Anita Castellino i/b. M/s. H.V. Gala & Co. for the Plaintiff.
Mr. V.A. Almeida for the Applicant.

CORAM : S.J. VAZIFDAR, J.

09TH OCTOBER 2007.

P.C. :-

. The Chamber Summons is taken out to set aside a warrant of attachment with respect to the premises viz. Shop No.9, Gaiwadi Sadan, 147, Dr. Vegas Street, Kalbadevi, Mumbai and item nos.3,4 and 5 of Annexure 'A' of the Execution Application.

2. The Applicant has established quiet clearly that he is the owner of the said premises. The share certificate was issued on 1st December 1968 in the name

of the Applicant's father. Thereafter, the share certificate was transferred to the Applicant's name on 1st August 2003.

3. The Applicant has been in possession of the said premises since inception. The same is evident by the series of documents including electricity bills, telephone bills, ration card in the name of the Applicant's son, certificate under the Bombay Shops and Establishments Act, 1948 and the election card. There is nothing which casts any doubt on the authenticity or validity of these documents.

4. It was contended that the execution was sought on the basis of an agreement of leave and licence dated 29th April 2005 allegedly entered into between one Sonal B. Mehta and one K.B. Patel, the Second Defendant. Firstly, the leave and licence agreement is not even in respect of the same property. It is in respect of the property at Ville Parle. Defendant No.2 has stated his residential address to be 19, Gaiwadi Sadan. The subject matter of this Chamber Summons is Shop No.9. Further, the Applicant's premises are a shop and not residential premises.

5. That the goods of the Respondent were lying in the Applicant's shop is of no consequence. In fact, the same has been explained satisfactorily by the Applicant. The Applicant runs a packaging business. That is the reason why some of the goods of the Defendants were lying there. The Applicants have not claimed any right in respect of the said goods. The same however, cannot by any stretch of imagination indicate that the shop itself belongs to the Defendant.

6. The Plaintiff has therefore failed to furnish satisfactory evidence as to the Defendants right in respect of the property attached as well as to the identity of the property.

7. Nor is there anything on record to indicate that the items at serial nos.3,4 and 5 of Annexure 'A' of the Execution Application belong to the Judgment Debtor.

8. In the circumstances, the Chamber Summons is made absolute in terms of prayer clause (a). The attachment is raised forthwith.